IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 8.11.2006

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

WRIT PETITION No.34543 of 2002

Charles R.Jebasingh ... Petitioner

Vs.

1. The Registrar,
   Manonmaniam Sundaranar University,
   Tirunelveli.

2. The Bishop of Kanyakumari Diocease,
   CSI Bishop House,
   Nagercoil.

3. The Dioceasan Secretary,
   Kanyakumari CSI Diocease,
   Nagercoil.

4. The Correspondent,
   Nesamony Memorial Christian College,
   Marthandam. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India as stated therein.

For petitioner : Mr.T.Ponram Kumar
For respondents : Mr.V.Govardhan for R1
Mr.K.Ravichandra Babu for R4

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O R D E R

The Writ Petition has been filed praying for the issuance of a writ of mandamus to direct the respondents 2 to 4 to allow the petitioner to work as a lecturer in the M.B.A. Department (Self Finance) of Nesamony Memorial Christian College, Marthandam, as per the appointment order, dated 19.4.2000 and as per the proceedings of Bishop, dated 18.8.2000 and to direct the respondents to calculate the service period from 1.6.2001.

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The brief facts of the case, as stated by the petitioner, are as follows:

2. The petitioner is a Post Graduate in Business Administration. He had passed the degree of Bachelor of Business Administration in the year 1995 from the Madurai Kamaraj University. Thereafter, he did his Master of Business Administration in the Bharathiyar University, Coimbatore, and had passed the Master of Business Administration Course in the year 1998, in first class, scoring 66.70% marks.

3. By proceedings, dated 19.4.2000, in CCM/2000:228, the Correspondent-Secretary of the Nesamony Memorial Christian College, Marthandam, had appointed the petitioner as a temporary Lecturer in the Master of Business Administration Department, with effect from 19.4.2000. According to the said proceedings, the petitioner was not eligible to claim the salary or any other remuneration from the Management upto the month of May, 2001. However, it was also stated that he would be paid the salary from the month of June, 2001, onwards as per the norms of the Self Finance Department in the said College. Accordingly, the petitioner had been appointed as a Lecturer in the Master of Business Administration (Self Finance) Department, on 19.4.2000 and he was working there hoping that he would be absorbed as a permanent Lecturer with salary from the month of June, 2001, onwards, as per the appointment order. He was signing the attendance register upto the date of the closing of the College for the academic year 1999-2000.

4. It has been further stated that even though the petitioner was present in the College and working on all the working days during the year 2000-2001 upto 14.8.2000, the Principal of the College did not allow him to sign the attendance register. Therefore, the petitioner had represented the matter to the Correspondent of the College, the fourth respondent herein, by his representation, dated 15.8.2000. It is also stated that the petitioner's appointment was approved by the proceedings of the second respondent, dated 18.8.2000. Since the petitioner was not permitted to discharge his duties, he had made a further representation, dated 24.9.2001, to the second respondent, to issue suitable directions to the Correspondent of the Nesamony Memorial Christian College. The petitioner had also submitted another representation, dated 11.6.2002, to the second respondent herein. In spite of repeated requests and representations, the petitioner was not allowed to sign the attendance register and to take classes for the students of the College.

5. It was further stated by the petitioner that the Master of Business Administration Course of the College was approved by the first respondent University showing the petitioner as the Lecturer of the Master of Business Administration Department. Even though the

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appointment order, dated 19.4.2000, was issued as per the minutes of the Governing Board, dated 23.9.1999 and thereafter, approved by the proceedings of the second respondent, dated 18.8.2000, the petitioner was not allowed to discharge his duties given to him. In such circumstances, the present writ petition has been filed.

6. In the counter affidavit filed on behalf of the first respondent, it has been stated that under Section 15(1) of the Tamil Nadu Private Colleges (Regulation) Act, 1976, the jurisdiction of the University relating to the employment of the teachers in Private Colleges ends with the prescription of the qualifications and the approval of the qualifications of the teachers appointed by the College Management, if it conforms to the prescribed qualifications. It has no jurisdiction or authority with regard to the conditions of service of the teachers, who are entirely governed by the terms of the agreement entered into between the College Management and the teacher employee in the format prescribed under the Act and the Rules framed thereunder and the terms and conditions of the code of conduct prescribed under Rule 12. Further, under Section 19 of the Act, it is provided that no teacher employee like the petitioner shall be dismissed/removed or reduced in rank or his appointment otherwise terminated without the prior approval of the competent authority. Therefore, it is open to the petitioner to approach the Director of Collegiate Education, who is the competent authority, as prescribed under Rule 23. Further, under Section 20(a) of the Act read with Rule 14 of the Rules framed thereunder, the petitioner has a right of appeal to the Government against the termination of his service. Therefore, the present writ petition is premature, as the petitioner has not approached the competent authority or filed an appeal as provided under law.

7. In the counter-affidavit filed on behalf of the fourth respondent, it has been stated that the Governing Board of the fourth respondent College had interviewed 22 candidates, on 23.3.1999, for the post of Lecturer and 8 persons were placed in the waiting list. Since Master of Business Administration Department needed only five faculty members for the 2 year Course, the appointment orders were issued to the first three wait listed candidates, on 15.4.2000, as Lecturers for the first year. Insofar as the second year is concerned, the appointment orders were issued to the fourth and fifth wait listed candidates, on 19.4.2000, on condition that they should work only on a honorarium basis for the first year. As per the appointment orders made, on 15.4.2000, the first three wait listed candidates, namely, Thampi Sam Luther, V.Vijuresh Nayagam and Shiny Joined duty, on 15.4.2000, 17.4.2000 and 18.4.2000, respectively. However, the wait listed candidates four and five, namely, Sam Santhosh and the petitioner herein, for whom the appointment orders were issued, on 19.4.2000, did not join in duty. Therefore, the averments made by the petitioner that he had

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joined in duty pursuant to the appointment order, dated 19.4.2000 and signed the attendance register are false.

8. It has also been stated that the proceedings of the second respondent, dated 18.8.2000, cannot be relied upon by the petitioner, as the second respondent is only an ex-officio Chairman of the Governing Board of the fourth respondent College and does not have the powers to make appointments.

9. Further, it has been stated that the petitioner had applied for the same post once again, on 14.8.2000, for which an interview was conducted, on 1.2.2002, along with the other applicants and a wait list was prepared, wherein the petitioner was listed as the fourth candidate. Since there was only one vacancy, the number one wait listed candidate, Elen Priya, had been appointed.

10. It has also been pointed out that in his application, dated 14.8.2000, for the teaching posts in the fourth respondent College, the petitioner had stated in clause 11 of the application that he was working as a Lecturer in Austin Annammal Institute of Health and Technology in Hospital Administration Department. This clearly goes to show that the petitioner was working elsewhere during the period he claims to have been working in the fourth respondent College. Therefore, the petitioner has never joined in duty based on the order of temporary appointment, dated 19.4.2000. Even otherwise, the petitioner has alternative remedies under the Tamil Nadu Private Colleges (Regulation) Act, 1976, and the Rules framed thereunder.

11. Based on the rival contentions of the learned counsels appearing for the petitioner as well as for the respondents and on a perusal of the documents available, this Court is of the considered view that the petitioner has not made out a case to invoke the jurisdiction of this Court under Article 226 of the Constitution of India to issue a writ of mandamus as prayed for. Even if it could be shown that the petitioner was really aggrieved by the act of the fourth respondent College relating to his non employment, it would be open to the petitioner to agitate the matter before the appropriate authority as provided under the Tamil Nadu Private Colleges (Regulation) Act, 1976, and the Rules framed thereunder. Further, it goes without saying that it is also open to the petitioner to approach the fourth respondent for such employment in future. It is also made clear that the dismissal of the writ petition will not preclude the petitioner either to invoke the relevant provision of the Tamil Nadu Private Colleges (Regulation) Act, 1976, and the Rules framed thereunder or to approach the fourth respondent by way of an appropriate representation to consider him for future employment.

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For the reasons stated above, the writ petition stands dismissed. No costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1. The Registrar,
   Manonmaniam Sundaranar University
   Tirunelveli.

2. The Bishop of Kanyakumari Diocease,
   CSI Bishop House,
   Nagercoil.

3. The Dioceasan Secretary,
   Kanyakumari CSI Diocease,
   Nagercoil.

4. The Correspondent,
   Nesamony Memorial Christian College,
   Marthandam

1 cc to M/s. Row and Reddy, Sr. 53469
1 cc to Ms.AL. Gandhimathi, Sr. 53965

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